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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/527,740  | 08/31/2005  | Christoph Kern       | 095309.56013US      | 9146             |
| 23911 7590 04/14/2008<br>CROWELL & MORING LLP<br>INTELLECTUAL PROPERTY GROUP<br>P.O. BOX 14300<br>WASHINGTON, DC 20044-4300 |             |                      |                     |                  |
| EXAMINER  |             |                      |                     |                  |
| MCPARTLIN, SARAH BURNHAM  |             |                      |                     |                  |
| ART UNIT  |             | PAPER NUMBER         |                     |                  |
| 3636  |             |                      |                     |                  |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/527,740

**Applicant(s)**

KERN ET AL.

**Examiner**

Sarah B. McPartlin

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 9-11, 13-17 and 20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-11, 13-17 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 10 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 10, the phrase "together with the, set a desired seat contour controller" renders the claim(s) indefinite. Together with the what? Did Applicant intend to state that the pressurizable elements are individually actuatable and together with the controller set a desired seat contour? Clarification is required.

Regarding claim 17, how do the pressurizable elements change the seat surface controller? Did Applicant intend to state that they chance the seat surface contour? Clarification is required.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 9-10 and 14-16 are rejected as best understood under 35 U.S.C. 102(b) as being anticipated by Kashiwamura et al. (4,655,505). With respect to claim 9,

Kashiwamura et al. disclose a vehicle seat (S) comprising: a seat cushion (unlabeled), a seat back (unlabeled), a plurality of individually pressurizable elements (1)(2)(3)(4)(5)(6)(7)(8)(9)(10) distributed over substantially an entire surface of at least one of the seat back and the seat cushion for adjusting a seat contour of said vehicle seat (S); and a controller (41) for pressurizing individual pressurizable elements; wherein the controller (41) is configured to provide massage effects, for example "by varying the air pressures to be filled into the air bags in a certain pattern according to the thus detected driving time, for instance every 30 minutes, the body pressure distribution of the driver may be varied and the fatigue of the driver may be reduced" (column 10, lines 33-38) and "by using a relatively short period or high frequency, it is possible to effectively reduce the fatigue of the driver by applying massage to him" (column 10, lines 50-53); and the pressurizable elements are cushion-like elements which are small in relation to a surface of the seat contour to generate punctiform pressures on the seat back and seat cushion, as is best depicted in Figure 1, and are actuatable via individually via lines (25) via the controller (41) in order to provide massage affects at punctiform locations and change the seat contour in a substantially localized manner.

With respect to claim 10, the pressurizable elements (1) to (10) are individually actuatable together with the controller (41), set a desired seat contour. Setting the desired seat contour involves the MEMO sub-routine discussed in column 6, lines 3-35.

The pressurizable elements are actuatable via respective separate lines (25), which are brought together at valve unit (24) in a manner such that they are bunched together in the direction of the controller (41) as best depicted in Figure 1.

With respect to claim 14, the elements are pressurized pneumatically by way of a "motor-driven air pump 27" (column 3, line 64).

With respect to claim 15, the controller (41) is adapted for carrying out a multiplicity of pre-set and individually settable massage functions. Some of the pre-set functions including periodically increasing or decreasing the air pressure in the pressurizable elements to alert a dozing driver or by providing massage in relatively short period or high frequency as disclosed in column 10, lines 28-52. Individually settable massage functions are performed by using UP and DOWN keys as disclosed in column 5, lines 34-68.

With respect to claim 16, a plurality of preselected settings of the seat contour can be stored by means of the controller (41) as described by using the MEMO function in column 6, lines 3-13.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 11, 13, 17 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kashiwamura et al. (4,655,505) in view of Thomas et al. (6,212,719). With respect to claims 11, 13 and 17-20, Kashiwamura et al. disclose all claimed elements with the exception of pressurizable elements and lines which are fixed on a sheet-like support insert or sheet carrier inserted below a covered lining.

Thomas et al. disclose a plurality of pressurizable elements (28), which are pressurized via a series of lines (38). Pressurizable elements (28) and lines (38) are fixed on a support insert (26). Support insert (26), pressurizable elements (28) and lines (38) are positioned below a covered lining (16) shown in Figure 1.

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to position on the pressurizable elements (1) to (10) disclosed by Kashiwamura et al. on an insert (26) and place the insert between a cover and a lined upholstery layer as taught by Thomas et al. Such a construction provides the massaging benefits of the Kashiwamura et al. device while concealing the mechanisms used to create the massaging effect and also helps prevent the mechanisms from shifting out of place within the seat structure.

### ***Response to Amendment/Arguments***

7. The amendment filed on January 31, 2008 has been considered in its entirety.

Applicant argues that the Thomas et al. air massager cushioning device has nothing whatsoever to do with seat contouring. The examiner disagrees. By rapidly inflating and deflating the air glands disclosed by Thomas et al., the contour of the

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massaging device will inherently change because the amount of internal pressure within the air glands changes causing expansion and contraction. Applicant further argues that Kashiwamura et al. does not utilize punctiform pressure. The Examiner contends that the pressurizable elements 1 through 10 are significantly smaller than the surface area of the seat as a whole. Therefore, they function to provide punctiform support. Punctiform is a relative term. In relation to the total surface area of the seat and back, elements 1 through 10 provide punctiform support. Applicant further argues that Kashiwamura does not disclose a device that has anything to do with massaging in the well understood meaning of the term. Again, the Examiner disagrees. Kashiwamura states "by varying the air pressures to be filled into the air bags in a certain pattern according to the thus detected driving time, for instance every 30 minutes, the body pressure distribution of the driver may be varied and the fatigue of the driver may be reduced" (column 10, lines 33-38) and "by using a relatively short period or high frequency, it is possible to effectively reduce the fatigue of the driver by applying massage to him." He even uses the word "massage" to explain how his device performs. Applicant further argues that Kashiwamura does not disclose a control device. Element (41) constitutes a control device and is named a "control unit" for controlling the function of the device.

### ***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah B. McPartlin whose telephone number is 571-272-6854. The examiner can normally be reached on M-Th 7:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Dunn can be reached on 571-272-6670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sarah B. McPartlin/  
Primary Examiner  
Art Unit 3636

SBM  
April 10, 2008